

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JARED ANDREW MARTIN,

Plaintiff,

V.

OFFICER NORTHCUTT, et al.,

Defendants.

Case No. 1:22-cv-00748-ADA-EPG (PC)

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE,
BECAUSE OF PLAINTIFF'S FAILURE TO
COMPLY WITH COURT ORDERS AND
PROSECUTE THIS CASE**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS**

Jared Martin (“Plaintiff”) is a prisoner (or former prisoner) proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On May 15, 2023, the Court issued an order requiring Plaintiff to file notice of change of address or to confirm his current address within fourteen days. (ECF No. 15). As the Court explained:

According to the Court's docket, Plaintiff is incarcerated at Madera County Jail. However, the Court takes judicial notice of another case filed by Plaintiff, *Martin v. Fisher* ("Martin I"), E.D. CA, Case No. 1:22-cv-00847. In *Martin I*, mail sent to Plaintiff at Madera County Jail was returned as undeliverable, Plaintiff's deadline to update his address expired, and the Court issued findings and recommendations, recommending that the case be dismissed. See *Martin I*, ECF No. 12.

1 (Id. at p. 1).¹ The Court also warned Plaintiff that failure to comply may result in sanctions,
 2 including dismissal. (Id. at p. 2). The Court's order was returned as undeliverable.

3 Plaintiff's deadline to update his address has passed, and Plaintiff has not filed a notice
 4 of change of address nor has Plaintiff confirmed his current address. Accordingly, Plaintiff
 5 failed to comply with the Court's May 15, 2023 order. Therefore, the Court will recommend
 6 that this case be dismissed, without prejudice, because of Plaintiff's failure to prosecute this
 7 case.

8 "In determining whether to dismiss a[n] [action] for failure to prosecute or failure to
 9 comply with a court order, the Court must weigh the following factors: (1) the public's interest
 10 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
 11 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
 12 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
 13 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

14 "The public's interest in expeditious resolution of litigation always favors dismissal."²
 15 Id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,
 16 this factor weighs in favor of dismissal.

17 As to the Court's need to manage its docket, "[t]he trial judge is in the best position to
 18 determine whether the delay in a particular case interferes with docket management and the
 19 public interest.... It is incumbent upon the Court to manage its docket without being subject to
 20 routine noncompliance of litigants...." Id. Plaintiff has failed to keep the Court informed of his
 21 current address as required by the Court's order. This failure is delaying this case and
 22 interfering with docket management. Therefore, the second factor weighs in favor of dismissal.

23 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
 24 and of itself to warrant dismissal." Id. (citing Yourish, 191 F.3d at 991). However, "delay
 25 inherently increases the risk that witnesses' memories will fade and evidence will become
 26 stale," id. at 643, and it is Plaintiff's failure to keep the Court informed of his current address

28 ¹ On May 24, 2023, the assigned district judge in *Martin I* adopted the Court's recommendations in full
 and *Martin I* was dismissed, without prejudice. See *Martin I*, (ECF No. 13).

1 that is causing delay and preventing this case from progressing. The Court is unable to contact
2 Plaintiff because of Plaintiff's failure to update his address, and the case cannot proceed
3 without Plaintiff. Therefore, the third factor weighs in favor of dismissal.

4 As for the availability of lesser sanctions, given that Plaintiff has stopped prosecuting
5 this case, despite being warned of possible dismissal, there is little available to the Court which
6 would constitute a satisfactory lesser sanction while protecting the Court from further
7 unnecessary expenditure of its scarce resources. Considering Plaintiff's *in forma pauperis*
8 status, it appears that monetary sanctions are of little use. And as Plaintiff has stopped
9 prosecuting this case, excluding evidence would be a meaningless sanction. Additionally,
10 because the dismissal being considered in this case is without prejudice, the Court is stopping
11 short of using the harshest possible sanction of dismissal with prejudice.

12 Finally, because public policy favors disposition on the merits, this factor weighs
13 against dismissal. Id.

14 After weighing the factors, the Court finds that dismissal without prejudice is
15 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 16 1. This case be dismissed, without prejudice, because of Plaintiff's failure to
17 prosecute this case; and
18 2. The Clerk of Court be directed to close this case.

19 These findings and recommendations will be submitted to the United States district
20 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
21 fourteen (14) days after being served with these findings and recommendations, Plaintiff may
22 file written objections with the Court. The document should be captioned "Objections to
23 Magistrate Judge's Findings and Recommendations."

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1 Plaintiff is advised that failure to file objections within the specified time may result in
2 the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
3 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4 IT IS SO ORDERED.
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6 Dated: June 30, 2023

7 /s/ *Eric P. Groj*
8 UNITED STATES MAGISTRATE JUDGE

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